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NEW COMMUNITIES IN THE UNITED STATES — A SURVEY*

CURTIS J. BERGER**

Definition of a new community:

A large-scale development constructed under single or unified management, following a fairly precise, inclusive plan and including different types of housing, commercial and cultural facilities, and amenities sufficient to serve the residents of the community. It may provide land for industry or be accessible to industry, offer other types of employment opportunities, and eventually achieve a considerable measure of self-sufficiency.¹

One hundred years ago, the population of the United States was 40 million. Today, it is nearly 210 million. Population density per square mile has increased during the same period from 13.4 to nearly 60.² To European eyes,³ the United States may still seem sparsely settled, despite this five-fold increase in population and slightly smaller increase in density. But people do not disperse themselves evenly. For example, concentration in the state of New Jersey is greater than in West Germany, while fewer than 4.0 persons per square mile occupy the state of Wyoming, which has a land area six times the size of Switzerland. Two persons in three live in metropolitan counties, which account for less than two percent of the nation's land mass. Moreover, concentration continues. Every census since 1870 reveals a positive increase in the total proportion of the nation's population living in urban areas.

To fully describe the American experience, one must mention not only concentration (or urbanization), but also decentralization within metropolitan areas. At least one major city is at the core of every metropolitan area, but since 1920 the percent of Standard Metropolitan Statistical Area (SMSA)⁴ population within the central cities has

* This article was prepared originally for discussion at the XXIV^e Congrès d'Union Internationale Des Avocats, which took place in Paris, France on July 26-30, 1971. I have slightly abridged the text for this symposium and where possible, I have added more recent data.

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¹ ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS, URBAN AND RURAL AMERICA: POLICIES FOR FUTURE GROWTH 64 (1968) [hereinafter ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS].

² If we exclude the "non-continental" states of Alaska and Hawaii, the per capita density per square mile is 70.

³ For some European comparisons (persons per square mile): France 238.3; West Germany, 613.2; Netherlands, 919.4. See generally INFORMATION PLEASE ALMANAC 195-328 (1971).

⁴ This is a definitional term used by the Bureau of the Census.

dropped from 65 to less than 40.⁵ Presently, central city growth is only one-sixth the growth outside the central city. Putting it differently, central city population has begun to stabilize, but in the suburbs and outlying communities, very rapid development goes on.

Within a metropolitan area, many decision-makers combine to influence the course of development, but private enterprise — in the person of land developers and home builders — has been the decisive force in determining when and where new development shall occur and, within each development, the amount and type of housing and other facilities that shall be built. Except for low-rent projects, which represent less than two percent of the total housing supply, government itself has built very little housing, nor does it have much to say about what others build.

The home-building industry is one of America's largest, yet in many of its aspects remains a small-scale, handicraft-type operation. Nearly half the new housing is accounted for by builders who construct fewer than one hundred units a year.⁶

Given the absence of governmental activity and the limited number of private builders able to plan and operate in an extensive way, new communities have been the exceptional rather than the usual means for housing our urbanizing population, although we may be on the verge of significant change. Still, the new community does occupy an historic role in the nation's development both for the renown enjoyed by some of the examples and for their prototypal importance for the future.

New community antecedents are diverse and ancient. Williamsburg was laid out as a planned community to serve as the capital of colonial Virginia and in the 1790's, the nation's capital, Washington, D.C., was conceived as a city "though not as large as London, yet with a magnitude inferior to few others in Europe." A French engineer, Pierre L'Enfant, created the city's plan on a site ten miles square ceded to the federal government by the states of Virginia and Maryland. It was expected that Washington's population might someday reach 200,000.⁷

Company towns followed, built by paternalistic or self-seeking in-

⁵ ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS, *supra* note 1, at 4.

⁶ NATIONAL COMMISSION ON URBAN PROBLEMS, *BUILDING THE AMERICAN CITY* 431-32 (1969). A 1964 survey put the average production per builder-member of the National Association of Home Builders at 49 single-family units.

⁷ L'Enfant's conception of a governmental center with broad avenues radiating as the spokes of a wheel still dominates the City's plan. Many, including this writer, believe Washington is one of America's most beautiful cities. But Washington also testifies to the foolishness of imposing, even theoretically, a population ceiling on a thriving city. Its current population is more than 750,000 on a land area shrunk from 100 to 61 square miles after Congress decided in the 1840's that the rest was unneeded.

dustrial concerns to assure a ready labor supply. Examples include Lowell, Massachusetts (1832), Pullman, Illinois (1884), and Kingsport, Tennessee (1915). Some towns brought new ideas in planning, financing, and community services, but, in general, the housing was shoddy, the towns were bleak, and life within the towns was makeshift and dull. Writing about such company towns, one commentator has stated: "The history of these (industrial) communities provides few precedents that we would care to duplicate in the future."⁸

The forerunner of the suburban real estate development, which has dominated new community attempts in recent years, was the town of Riverside, Illinois, designed in 1869 by one of America's great city planners, Frederick Law Olmstead. Later came Roland Park, Maryland (1891), the Country Club District of Kansas City (1906), Forest Hills Gardens on Long Island, New York (1911), and Palos Verdes Estates of Los Angeles County (1923). All were largely successful attempts to achieve a highly congenial residential setting and insulation from city hubbub. Unlike company towns, these communities were run by their residents relying heavily upon deed restrictions and owners' associations to create and maintain a stable environment. The communities were not, however, egalitarian. Only the well-to-do could afford to live in them.⁹

Largely due to one man's zeal, Ebenezer Howard's "Garden City" ideas received an American tryout. The zealot, Clarence Stein, began in the 1920's with Sunnyside Garden Apartments in New York City. Several other communities, the most heralded being Radburn, New Jersey (1928), came next. They marked, in important respects, a new departure in urban design: the separation of pedestrian from vehicular traffic; the preservation of open space through interior parks and gardens; the use of the "superblock" to promote a sense of community. The last built, Baldwin Hills Village (1941), in Los Angeles County, came closest to realizing Stein's vision, although none of his "cities" ever became more than fair-sized residential subdivisions.¹⁰

The federal effort at new community building has been sporadic, a reaction to specific urgencies rather than an attempt to deal systematically with the problems of urbanization. During World War I, the United States Housing Corporation built 25 developments to ease the shortage of housing in the vicinity of war industries. During the Depres-

⁸ J. REPS, *THE MAKING OF URBAN AMERICA* 438 (1965). See also *ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS* at 68-69.

⁹ *ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS* at 69.

¹⁰ *Id.* at 69-71. Baldwin Hills Village has 1,170 tenants. Radburn houses fewer than 700 families.

sion, the Resettlement Administration was directed to design and build greenbelt towns (Ebenezer Howard, again) in an effort to stimulate employment and provide housing for low-income families. Three communities resulted: Greenbelt (on the outskirts of Washington, D.C.), Greenhills (Cincinnati, Ohio), and Greendale (Milwaukee, Wisconsin). Several new communities, notably Boulder City, Nevada and Norris, Tennessee, were built in the 1930's as part of federally sponsored power and reclamation projects. Finally, during World War II, the Atomic Energy Commission created on the site of atomic installations the cities of Oak Ridge, Tennessee; Hanford, Washington and Los Alamos, New Mexico. In each instance, when the urgency passed, the federal government discontinued its city building program and withdrew from the management of the communities already formed.¹¹

In the years immediately following the end of World War II, two major developers, Phillip Klutznick (American Community Builders) and the Levitt Corporation launched a group of new communities which, in their magnitude, exceeded any earlier efforts of private venture. These developers were the first of the post-war, large-scale merchant builders who merged land purchase, site improvement, house construction, and merchandising in a single firm. Klutznick built Park Forest, Illinois (1947). Levitt sired three towns, which it modestly named Levittown, New York (1947), Levittown, Pennsylvania (1951), and Levittown, New Jersey (1958). Best-known of these projects is Levittown, New York, whose present population totals 50,000.¹²

*The Present Extent of New Community Development*¹³

One should not be confident that he can report on the present extent of America's new communities. Remarkably, we have not systematically kept ourselves informed about major housing developments. Prior to 1967, what was known was pieced together from many sources; in that year, a survey completed by the Department of Agriculture indicated something of the scale and location of new communities. Using as its touchstone a minimum area of 950 acres, the Department identified more than 500 large developments which had been started between 1945 and 1967. Of these, 376 projects, involving 1.5 million acres (equal in area to the entire state of Delaware), were started be-

¹¹ *Id.* at 71-74.

¹² *Id.* at 74-76.

¹³ See ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS at 76-82, for further discussion; this includes a table of the major integrated new communities begun between 1960-1967.

tween 1960-1967 alone, testimony to the growing importance of bigness in residential activity.

What kinds of developments were underway? Nearly half were conventional housing subdivisions except for their size, built with minimal planning, offering only a narrow scope of housing and jobs, lacking many essential community facilities. Another 40 percent were special-use communities,¹⁴ with emphasis upon recreation, retirement, a second home, or, in a few cases, industry. Not more than one in ten of the developments achieved some integration of industry, commerce, residences and public uses, offered amenities not normally found in housing subdivisions, and could claim a nobility of plan.

Who are the new community builders? With few exceptions, all have been private business concerns which we conveniently group under five headings.¹⁵

(a) *Builder-developers* — These are companies whose primary business activity is large-scale development, and homebuilding. Typical of the group are Phillip Klutznick, builder of Park Forest, Illinois; Rossmoor Corporation, which has created five Leisure World retirement communities; Del E. Webb Company, the developer of Sun City, Arizona; and James Rouse, the founder of Columbia, Maryland.

(b) *Large National Corporations with Available Cash* — These companies are motivated basically by a desire to stimulate product sales and to develop and test new products. Westinghouse refers to its Coral Springs, Florida, enterprise as "an urban living laboratory" which will innovate in home products and systems. General Electric is seeking a site to house 100,000 persons "to serve as a show piece for technological and other breakthroughs." Boise-Cascade, a lumber and timber products company, once had 26 projects underway in a dozen states; its developments became the stereotype for the "standard" recreational community: a country-club with golf course, a lake, and 2,000 to 4,000 second-home plots. Kaiser Aluminum and the American Cement Company are two other concerns that have entered, somewhat more diffidently, the community development field.

¹⁴ Examples of special-use communities are the Leisure Villages, for the "elderly" (50 years and older) and the recreation-based communities of Sea Ranch, 5,000 acres north of San Francisco, on the Pacific; New Seabury, on Cape Cod, Massachusetts; and Jappatowne, offering multiple marinas on Chesapeake Bay, not far from Baltimore. *FORTUNE*, Feb. 1966, at 158, col. 2.

¹⁵ One venturer defying easy classification is Robert Simon. Simon was a wealthy man having some experience in office building management and shopping center development, but with no previous background in construction. In 1960, his firm realized a substantial profit from the sale of Carnegie Hall, which Simon decided to reinvest in the purchase of 6,000 acres in Fairfax County, Virginia and in the development of a new town, Reston, on the site.

(c) *The Oil Industry Case* — This is treated as a special case, since the oil industry has long enjoyed a favorable tax position which has resulted in large cash accumulations, extensive land holdings, and a bias toward development activity. Sunset International Petroleum has backed three new communities in California — Sunset City, San Marin, and San Carlos. The Humble Oil Company, a subsidiary of Standard Oil of New Jersey, is building Clear Lake City, Texas on 15,000 acres of land that it owns and once intended to expand industrially. The Gulf Oil Company was an early investor in Reston, Virginia, and in late 1967 took over control of the development through a subsidiary. Part of Gulf's original agreement with Reston's promoter, Robert Simon, was a first option on filling-station sites throughout the new town.

(d) *The Land Owners* — These are land companies that have methodically "ripened" land for many years and are now reaching for the pay-off. Among this group are the Irvine Company, with extensive ranching, citrus, and mining holdings south of Los Angeles; the Janss Conejo firm which is building Conejo Village, California, on 11,000 acres held since 1911; the Newhall Land Company, sponsors of Valencia, a 4,300 acre community in Los Angeles County on part of the company's 40,000 acre holdings.

(e) *Mortgage Lenders as Equity Investors* — A few institutions that would ordinarily be only the mortgage lender have taken, in effect, an equity position. An outstanding example is that of the Connecticut General Life Insurance Company, whose loan agreement with James Rouse entitles it to a voice in Columbia's management and a share of the profits.

Land Acquisition for New Communities

America's prodigality takes many forms, but nowhere are waste and inefficiency more apparent than in the use of land. Endowed with a vast land mass and committed to a belief both in private ownership and in local autonomy with respect to land planning, the nation has not attempted to establish rational land development policies. Most of the undeveloped acreage in urbanizing areas is privately held, and the usual first step in a new development — with the exception of urban renewal¹⁶ — is the *developer's* choice of location. His decision invariably depends

¹⁶ Urban renewal is a federally aided program for the redevelopment of blighted neighborhoods. Here, the local governing body initiates a project and decides how the land is to be redeveloped. By acquiring title to the land and reselling it to a redeveloper ready to carry out the community's reuse plan, local government can shape the development. Albeit important for the central city and the core areas of older suburban communities, urban renewal has played almost no role in the development of new communities.

on the availability of a site whose price is "right," which in turn depends on the price and terms that he can negotiate with the owner, the number of housing units per acre that the local zoning law permits him, the expense of building an infrastructure of roads, sewers, and water supply, and his prediction of market response. While government may influence that decision by adjusting its zoning, by improving highways, or by extending sewer and water facilities into undeveloped areas, zoning and capital budgeting have had a dismal record as instruments of a consciously articulated, rational land development policy. Zoning's influence has been almost entirely negative: it has reinforced racial and social separatism, and it has held back experimentation with housing types, urban design, and mixtures of land use. Capital budgeting tends either to lag behind new development or, where development is anticipated, to proceed inattentively to the long-range effects of opening new areas for settlement.

Thus the builder goes where expediency carries him. The more ambitious his plan, the more difficult his task of finding a suitable site. Robert Simon had to go 18 miles west of Washington, D.C. to find a 7,180 acre parcel for Reston; Allan Lindsey acquired 9,000 acres — the site of El Dorado Hills — 25 miles from Sacramento, California (by car it is 40 minutes away and there are no regular busses), and Humble Oil & Refining Co. built Clear Lake City, Texas on 15,000 flat acres 25 miles from Houston, on land it had owned for 28 years. Except for the occasional accident of a large parcel in the hands of a single owner, for example, the vast Irvine Ranch in California,¹⁷ assembling the acreage to accommodate 10,000 or more new residents often necessitates separate land deals with dozens, perhaps hundreds of individual owners: 165 transactions were required to assemble the 15,000 acres that have become Columbia, Maryland. Even at that, James Rouse put together a parcel of "Swiss cheese," since there were already 15 subdivisions housing 7,500 people within the Columbia boundaries.

Because private developers do not enjoy the power of eminent domain, acquisition costs are inflated by the quite human tendency of landowners to press their advantage and to "hold out" for the best price they can obtain. Word that an assembly is taking place invariably causes the asking price to climb and despite the cloak-and-dagger methods —

¹⁷ Similarly, Co-op City, a high-rise community of 50,000 persons was located in the outer reaches of the Borough of the Bronx (New York City) largely because William Zeckendorf failed in his attempt to build a Disneyland of the East — called Freedomland — on the site. The land was sold in distress, and although a bargain, it is poorly served by the city's rapid transit system — a major shortcoming since many of Co-op City's residents must travel to jobs in other boroughs.

e.g., the use of multiple corporations to obtain unrecorded options — which accompany large-scale land acquisition, the developer is seldom able to conceal his plans until he finishes the assembly, and must fully expect to pay an overall premium, usually not less than 25 percent, over the intrinsic raw land value. Moreover, our system favors the “hold out” owner, since he is permitted to keep, except for a nominal property tax and a modest capital gains tax, the incremental value which inures to his land whenever urbanization occurs in his area. Despite an assembler’s willingness to pay almost any price, some landowners still refuse to sell or will deal only if they can retain a life estate or a reversionary interest (an arrangement that may be very advantageous to them taxwise). As a result, the physical plan of a new community may be modified, perhaps less desirably, to reflect the whims of a group of landowners, and where the assembler acquires some parcels in fee, some by lease, and some by remainder, both his planning and financing problems are further complicated.

In any event, when he completes his assembly, the developer will have made a sizable investment in land costs alone. The rule of thumb is that he should not pay more than an average price of \$1,500 an acre, but for a project the size of Columbia, that average resulted in a total land cost of \$23 million. Other examples are Reston (average: \$1,900 an acre; total cost, \$13.5 million) and El Dorado Hills (average: \$1,000 an acre [1959 prices]; total cost, \$9 million).

Financing of New Communities

The need for financing occurs at four principal stages in the development of a new community. These are: acquisition of land, installation of infrastructure, construction of buildings, and disposition of buildings.

Acquisition of land: Land acquisition, which usually requires a heavy outlay,¹⁸ may be very difficult to finance. Banks and insurance companies, the usual sources of real estate mortgages, are sharply limited in their ability to make loans on raw land. Undeveloped acreage earns no funds to pay the interest charges, and until there are homes or other improvements for sale and purchasers ready to buy, the loan remains speculative. Where the interval from land acquisition to construction of buildings lasts years — as it does for the larger communities

¹⁸ By getting the land seller to accept part of the purchase price in paper, the developer can reduce his original cash outlay. To the extent that this is possible, the seller has helped to finance the transaction. On the other hand, the buyer’s readiness to deal on an all-cash basis, very often, will enable him to bargain down the price.

— and where the sums involved are enormous, few institutional lenders have been both able and willing to issue loans. Title X¹⁹ (enacted 1965) and Title IV²⁰ (enacted 1968), of the Housing and Urban Development Act were passed by Congress to ease this situation through federal mortgage insurance and loan guarantees, but neither program is seasoned enough to determine its impact.²¹ If they are run with vigor, a major barrier to investment in new communities can be lifted.

Installation of infrastructure: Even after he has acquired the land, the developer faces a long and expensive period of further investment and deferred return. He must now prepare the infrastructure — the network of roads, sewers, water lines, landscaping and parks which will service the residents and workers who have not yet arrived.

Prior to the 1930's, a developer could usually count on the local government to pay for the infrastructure. Municipal credit was relatively strong; population growth was viewed cheerfully; and cities, borrowing heavily to do so, would install streets and sewers and extend transit and water lines in order to attract new homes and businesses. But during the Great Depression, many cities — their finances in disarray — were unable to meet the debt service on the funds they had borrowed for physical expansion. This lesson of the Depression was not lost on the suburbs. When after World War II, expansion shifted outward, suburban governments began to insist that the tract developer install, at his own expense, all the internal roads, sewers, and water lines that the subdivision would need. Many communities also required that the developer set land aside for school sites and parks.

All of this is expensive; infrastructure, typically, costs as much as the raw land. At Reston, the developer will spend more than \$14 million

¹⁹ Pub. L. No. 89-117, § 201 *et seq.*, 79 Stat. 451, 461 (1965).

²⁰ Pub. L. No. 90-448, § 401 *et seq.*, 82 Stat. 476, 513 (1968).

²¹ Housing and Urban Development Secretary Romney announced on December 30, 1970 that his agency had approved Federal aid for two new communities to be built in Texas and Arkansas. These were to be the fourth and fifth new communities whose developers had received loan guarantees under Title IV in the first two years of the program's operation. Flower Mound New Town, a 6,156 acre community to be located between Dallas and Fort Worth, received an \$18 million loan guarantee. Flower Mound would eventually provide housing for 60,000 persons. Maumelle, to be located outside of Little Rock, received a guarantee of \$7.5 million. Located on 5,319 acres, Maumelle was planned for 14,349 dwelling units. The new communities already receiving assistance were Jonathan in Chaska, Minnesota, St. Charles Community in Charles County, Maryland, and Park Forest South in Illinois. Wall Street Journal, Dec. 30, 1970, at 3, col. 4.

A sixth New Town, Cedar Riverside, is now underway within a 59-acre triangle bordered by the Mississippi River and two interstate highways adjacent to the University of Minnesota. Eventually it will house 60,000 persons, many of whom now reside in a blighted neighborhood of bars, tenements, experimental theatres, high-rise buildings for the aging and run-down houses occupied by students, dropouts, vagrants, and poor families. N.Y. Times, Feb. 4, 1971, at 37, col. 5.

for roads, sewers, and water, after spending \$13 million for the land. At Columbia, infrastructure costs may reach \$25 million, slightly more than Rouse paid for the site.

Financing the infrastructure may be a bit less difficult than obtaining the moneys for land acquisition. Legal restraints on land acquisition loans apply equally to infrastructure loans, but where the lender does have discretionary investment power, an infrastructure loan may seem less risky; the land is already assembled, zoning and planning approval are no longer doubtful, and the interval to construction is shortened.²² Some states permit the developer to organize a special improvement district — *e.g.*, a sewage disposal district — which can then issue and sell its obligations on the municipal bond market, and use the proceeds to install the service facilities.²³ In addition to land acquisition, the federal Title X and Title IV programs also cover land improvement, and all other development costs, such as engineers' and architects' fees, legal expenses, general overhead, real estate taxes, and, a considerable item, interest on the moneys already borrowed and to be borrowed for land acquisition and infrastructure. In addition, in 1970, Congress voted to extend the guarantees of Title IV to finance the erection of such public facilities as schools and hospitals.

Still other federal aid is available for infrastructure where the state or local government is ready to assist the project. Three agencies, the Department of Housing and Urban Development (HUD), the Farmers Home Administration (FHA),²⁴ and the Federal Water Pollution Control Administration (FWPCA) make grants for sewer and water facilities. FHA and FWPCA provide funds to public bodies for sewage treatment plants,²⁵ and HUD makes grants for water and sewer facilities other than those covered by FWPCA. The HUD grants cover one-half of the construction cost of water treatment and distribution

²² Thus, Rouse could borrow \$25 million from the Chase Manhattan Bank and the Teachers Insurance Annuity Ass'n. of America when he was ready to install the Columbia infrastructure.

²³ The bondholders hope to be repaid from tax revenues and user charges, levied by the district upon the homes and businesses benefiting from the service. What makes these obligations salable, since they do not receive the "full faith and credit" backing of the state or municipality, is their tax-exempt status. Interest payments gain immunity from federal taxes. A bondholder who is wealthy enough to be taxed at a fifty percent rate on his increments of income, would receive the equivalent of a 16 percent return from a special-improvement district bond yielding eight percent interest. Risky or not, there is a market for such investments.

²⁴ Not to be confused with another FHA, the Federal Housing Administration — a subdivision of the Department of Housing and Urban Development. This FHA administers all of the federal mortgage insurance programs.

²⁵ The FHA program covers the construction of both water and sewer facilities — up to a maximum of 50 percent of the cost — in a jurisdiction of 5,000 or less not adjacent to an urbanized area.

systems and sewage collections systems (the section 702 program), and the FWPCA grants cover 30 percent of the cost of waste treatment plants with a 10 percent bonus if a local comprehensive planning program is underway. Under the provisions of Title IV, HUD can allot additional grants of up to 20 percent of the cost of facilities that will benefit new communities in which housing for a "substantial" number of low and moderate income persons is planned. Also available, from both FHA and HUD, are long-term, low-interest loans for infrastructure purposes.

Construction of buildings: The community builder who has made it to the construction stage should not have too much difficulty in financing his building activities. Sometimes, construction funds will depend upon the availability of permanent financing for the completed units; if money generally is in short supply, or if a satisfactory sales or rental market does not exist for whatever he is about to build, the developer may have to pay a premium for his borrowings or wait until the market improves. Most established builders, however, make both their construction and permanent arrangement long in advance, and when they are ready to build, move ahead with either a line of credit or construction loan mortgages, usually obtained from a commercial bank. If the permanent mortgages are to be federally insured, the insurance can be extended to protect the construction draws as well, further easing the supply of construction funds. In the larger new communities the developer, instead of constructing all the homes and apartments himself, may sell or lease lots to other builders having their own sources of construction credit to carry the development forward.

Disposition of buildings: Recurring episodes of money shortage and high interest costs have shaken the housing finance market in recent years, resulting in depressed levels of housing starts. These conditions add some risk to new community development, since any slowdown in the construction and sale (or rental) of dwelling units increases the carrying costs — viz., property taxes, interest on debt, and general overhead — of the pre-marketing stages, and the costs may not be fully recoverable by a higher price to the ultimate purchaser (or tenant). New community builders, however, should fare no worse than smaller builders in arranging for permanent financing when mortgage money is scarce; in fact, their very size, prior experience, and network of contacts may give them a definite edge. But money market uncertainty will reinforce the developer's business preference to build chiefly for upper-income families since these persons are better credit risks,

better able to absorb higher interest rates, and less likely to be dismayed by rising sales prices.

In the past, financing of low- and moderate-income housing has been difficult to obtain even when mortgage supplies are ample. Given the prevailing technology, labor practices, land and development costs, and the expenses of running a dwelling, the lower income family cannot afford to live in a new home unless subsidies are provided.²⁶ Government has devised quite a variety of subsidy programs ranging from public housing to rent supplements to cheap interest loans, but for many reasons, these programs were not well-funded, and they have been especially unpopular in the outlying areas where most of the new communities are built. Two programs, initiated in 1968, give promise of reversing this trend; they are sections 235 and 236 of the National Housing Act²⁷ and provide for insured mortgages with interest rates as low as one percent. Sales housing, rental housing, cooperatives, and condominiums can all be financed through these programs. The Nixon administration, in just three years, has increased eight-fold the annual volume of subsidized housing starts, which went beyond 500,000 in 1971. Much of this was mortgaged under section 235 or 236.²⁸

Government Inside the New Community

During the beginning years of a new community, the internal government must seek to satisfy several competing interests. First: the developer's. The very magnitude and riskiness of his dollar investment require that he be able to carry his plans forward, resilient to market changes, unimpeded by the conserving attitudes of those already settled. Second: the new town residents'. The residents, too, have made an economic and social investment which they wish to enhance. And, finally: the larger society's. As a people we are committed, emotionally and constitutionally, to the view that each adult citizen shall have a voice in those decisions of government that concern his person and property.

In selecting a new town site, the developer must consider carefully

²⁶ For example, new housing units built in 1970 cost from \$15,000 upwards depending upon size, location, amenities, etc. The annual operating cost of a \$15,000 dwelling would not be less than \$2,000 in the absence of subsidy. To afford this shelter expense, a family would require an annual income of at least \$8,000.

²⁷ Pub. L. No. 90-448, §§ 101 & 201, 82 Stat. 476, 477, 498 (1968), amending, Act of June 27, 1934, ch. 847, 48 Stat. 1246.

²⁸ Further adding to the increased volume of subsidized housing starts were the widely advertised income tax incentives offered to developers by the Tax Reform Act of 1969.

whether he can form a governmental structure of his choice. That will depend upon state law, the system of local government in the jurisdiction where the property lies, and the readiness of that jurisdiction to accede to the developer's wishes. In general, the developer does better in a more sparsely settled, unincorporated area, which is another reason — independent of land availability and cost — for locating new communities in outlying districts.²⁹

The instrument chosen in many new communities to preserve the residential tone, to maintain the common areas, such as parks, playgrounds, paths, etc., sometimes to regulate the occupancy and ownership of dwelling units, and to provide varying amounts of governmental services is the "homes association," first used in the United States a century ago. "Government by contract" it has been called by the attorney who drafted the association papers for the new town Radburn. To create a homes association, the developer prepares and records a plat of the development, a declaration of covenants and restrictions for the entire parcel of land, and the articles and by-laws of the association — which he then incorporates. The declaration sets forth affirmative and negative covenants, easements, liens and charges which will bind every purchaser of the land and which will generally run with the land until they expire, perhaps two or three generations later.³⁰ When he acquires title, the purchaser gains some rights in the association, but he also remains subject to its rules and to the covenants and restrictions that limit his freedom as a resident and property owner.³¹ Thus, he might require association approval to make improvements to his lot or to sell his dwelling; he might be taxed to pay for park maintenance or for a new community swimming pool. His failure to fulfill his duties might cause the association to seek injunctive relief or to file a lien against his title which it could later foreclose.

The similar arrangements of Reston and Columbia are typical of

²⁹ For example, were a developer to consider a site within New York City, he would find it difficult to play an independent hand; even a new community of 100,000 would be dwarfed by the city of nearly eight million that is already there. While some planning and operational latitude might be his, the developer could not ignore the demands of well-established groups on the scene: the labor unions, the racial minorities, the taxpayers' leagues, the political parties, the conservationists, etc. Limitations on the rights of the new town residents to govern their affairs, which other citizens of the city do not suffer, would be short-lived.

³⁰ In the case of Columbia, the restrictions will not expire until the year 2065 at the very earliest.

³¹ Since no one is forced to buy and subject himself or his property to these limitations on personal freedom, one must ask why so many have done so. Most homebuyers believe that they will benefit from the restrictions in the form of stabilized property values. Undesired neighbors or land uses can be kept out; community facilities will be well-maintained and, from time to time, expanded.

what is found in the larger new communities where the developer will not end his activity for 15-20 years. Each town has been established, at the developer's instance, as an unincorporated "subdivision" within its respective county.³² Each town is governed by a dual system of homes associations. The "central" association is very much like a municipal government while the "peripheral" associations operate at the neighborhood level (100 homes) in Reston and at the village level (10,000 to 15,000 persons) in Columbia.

In the case of Columbia, the central body, called the Columbia Association, provides all municipal services not offered by the county government.³³ The Association finances its activities³⁴ through an annual charge—the municipal tax—which it levies against every property. Representation on the Columbia Association results from an electoral scheme whereby each village-level association selects members to a Columbia Council which, in turn, chooses from among its numbers the directors of the association. These directors then hire someone to manage Columbia; in effect, the Chief Executive. The developer, under a system of weighted voting, retains control of the Association's board of directors and, therefore, the choice of Manager, until 1976. Full representation is denied Columbia's residents until 1980. (Reston has a similar setup, with the developer retaining a minimum of one-third of the voting control until 1985.)

The powers left to the peripheral associations are limited to maintaining the adjacent common areas—generally parks, pathways, and parking lots. Columbia's village associations, to which all owners and tenants in the Village automatically become members, depend on voluntary dues, while Reston's cluster associations, to which only owners may belong, enjoy a modest taxing power.

In at least three respects the Columbia arrangement departs from accepted norms of municipal democracy.³⁵ We have seen the interposition of electors (the Council) between the public and their representatives (the directors of the Association). We have seen the control vested in the developer. Finally, in the election of Council delegates, the principle that governs is one vote per housing unit; the owners or tenants

³² Reston is in Fairfax County, Virginia. Columbia is in Howard County, Maryland.

³³ Howard County (as does Fairfax County) operates the schools, and furnishes police and fire protection, among the major services. They are paid for by county taxes levied against all properties within the County. Columbia citizens can elect a representative to the County legislature. Reston citizens can join other residents of Fairfax County in voting for a County Executive.

³⁴ These activities will include a transit system, a park and recreational complex, a cultural program, a health care program.

³⁵ So, too, the Reston arrangement.

in each dwelling must vote as a unit and, if they cannot agree, their vote is not counted.³⁶

The legality of this system seems uncertain in the wake of recent Supreme Court holdings on the Constitutional right to vote. The requirement that a voter own property has been severely limited for municipal, state, and federal elections as a denial of equal protection.³⁷ The Supreme Court has also disapproved, again as a denial of equal protection, certain electoral schemes where one man's vote carries less weight than another man's.³⁸ The case law in this field continues to be written. In the main, courts have acted pragmatically, recognizing both the futility and unwisdom of trying to establish rigid guidelines for every governmental arrangement. If asked to pass judgment on the system within Columbia (or within Reston) the courts might pay heavy deference to the developer's concern for his investment, especially since a new town resident has made a voluntary choice — with full disclosure in advance of his limited franchise.

Federal Aid to New Town Development

(a) Title X, Housing and Urban Development Act of 1965³⁹

Not until 1965 did Congress give its first encouragement to private community builders when, in the housing legislation of that year, it authorized federal mortgage insurance for land development. In enacting Title X, Congress realized that a major deterrent to community building was the difficulty in financing the preliminary stages of land acquisition and development. By insuring the mortgage on development loans, the federal government would, at once, eliminate certain legal barriers (since insured loans are exempt from state regulatory provisions) and, hopefully, add to the popularity of such mortgages with institutional lenders.

An approved community builder⁴⁰ can borrow up to \$25 million

³⁶ Here, the Reston system is even more objectionable. Tenants may not vote at all, yet the owner of rental units is given one vote for each unit within his control.

³⁷ *City of Phoenix v. Kolodziejski*, 399 U.S. 204 (1970) (revenue bond referendum); *Cipriano v. City of Houma*, 395 U.S. 701 (1969) (improvement bond referendum); *Kramer v. Union Free School District No. 15*, 395 U.S. 621 (1969) (local school election). Where all citizens are materially affected by governmental decisions subject to voter approval, ownership of property as a qualification for voting violates the fourteenth amendment. See also *Evaes v. Cornman*, 398 U.S. 419 (1970) (residents on tax-exempt federal enclave entitled to vote in local elections).

³⁸ *Wessberry v. Sanders*, 376 U.S. 1 (1964). See also *Abate v. Mundt*, 403 U.S. 124 (1971); *Whitcomb v. Chavis*, 403 U.S. 124 (1971).

³⁹ Pub. L. No. 89-117, § 201 *et seq.*, 79 Stat. 451, 461 (1965).

⁴⁰ As originally enacted, Title X was available—and remains so—for conventional subdivisions. The New Communities section, with its \$25 million ceiling and more exacting planning controls, was added the following year.

on an insured mortgage loan to finance the purchase of land and the installation of infrastructure. The latter includes water lines, sewer lines and sewage disposal plants, gas and electric lines, roads, gutters, storm drainage, sidewalks, land fill and grading. At present, loans must be repaid in ten years and may neither exceed 75 percent of the estimated value of the property after development nor the sum of 50 percent of the raw land value and 90 percent of the development cost.

Before he can issue an insurance commitment, the Secretary of Housing and Urban Development (HUD), who administers Title X, must be satisfied that the mortgage represents a "good . . . risk" — not an easy judgment to make in view of the scale of a new community and the absence of actuarial data to support his judgment. He must also be satisfied as to several features of the new community, which include:

1. adequate housing for those to be employed in the community or surrounding area;
2. inclusion of a proper balance of housing for families of low or moderate income;
3. maximum accessibility from the new residential sites to employment centers and commercial, recreation, and cultural facilities in or near the community;
4. a sound economic base.⁴¹

(b) Title IV, Housing and Urban Development Act of 1968⁴²

Three years after the enactment of Title X, Congress took two further steps to aid the private development of new communities. The first was intended to open up new sources of financing for land acquisition and improvement, for the provisions of Title X applied only to real estate mortgages, which limited both the categories of potential lenders (*viz.*, banks and insurance companies) and the dollars available on each loan. The 1968 measure authorizes the Secretary of HUD to pledge the nation's credit behind *any* obligations issued by a community developer to acquire and improve land. Backed by this guarantee, for as much as \$50 million on a project, the developer can sell its bonds to all kinds of investors — public bodies, fiduciaries, individuals, institutional lenders. Moreover, the ten year maturity limit of Title X does not apply. On each transaction, the principal debt cannot exceed the lesser of 80 percent of the estimated value of the developed land or the sum of 75 percent of the value of the land before development and 90 percent of the cost of development — a somewhat higher ceiling than

⁴¹ Housing and Urban Development Act of 1965, Pub. L. No. 89-117, § 1003(b)(2), 79 Stat. 451, 463 (1965).

⁴² Pub. L. No. 90-448, § 401 *et seq.*, 82 Stat. 476, 513 (1968).

the one permitted under Title X. In other respects, particularly in the statement of planning and economic standards, the 1968 law closely resembles Title X.

Title IV also creates a program of supplementary grants to state and local bodies where the funds are to be used to build community facilities that are tied to a new community that offers housing for a "substantial" number of low and moderate income persons.⁴³

(c) The Housing and Urban Development Act of 1970⁴⁴

This measure, which was not signed into law until January, 1971, may be the most significant action yet taken in behalf of new communities. It introduces several new forms of federal support and creates within HUD a Community Development Corporation to administer the overall program. The loan guarantees of Title IV are extended to include the obligations of public bodies, and where a public body is the new community developer, for example, the New York State Urban Development Corporation, it may obtain a guarantee for the *entire* cost of land development. Qualifying expenses are broadened to include the moneys spent for schools and hospitals.

Private developers will be further aided by a combination of outright federal grants to help defray planning costs and direct federal loans to cover interest charges, for as much as \$20 million a project, during the first fifteen years of development.

Finally, the Community Development Corporation is itself authorized to develop new communities for demonstration purposes on federally owned lands.

Proposals for Policy and Program Reform

America, as it faces the future, must decide how (or even whether) it wishes to deal with the following significant trends:

- a) Population growth continues. By the end of the century, the population should near 300 million, nearly 50 percent above the present level. This is equivalent to fifteen new cities of 200,000 each every year for the next generation.
- b) Urbanization continues. In 1967, two-thirds of the population lived in metropolitan counties. This proportion will rise to three-fourths within five years.
- c) In the next thirty years, the urbanized land area will double.
- d) To absorb population growth and to replace worn-out housing

⁴³ Under existing law, federal grants were already available for up to 50 percent of the cost of these facilities. Title IV adds another 20 percent.

⁴⁴ Pub. L. No. 91-609, § 710 *et seq.*, 84 Stat. 1770 (1970).

or housing that is lost to highways, schools, non-residential uses, etc., the nation must build more than 65 million new dwelling units by the year 2000 — as many units as now exist.

- e) More than half of all new service and manufacturing jobs will be found in suburbs and outlying areas. Yet, lower income families cannot afford most of the housing built there, and public transportation from the central cities outwards is inadequate or lacking.
- f) White middle-class families continue to leave the cities. Left behind are the poor, the elderly, the blacks and Puerto Ricans.

These trends pose an enormous challenge — to the quality of life, to the preservation of natural resources, to the ideal of racial harmony, to the fiscal stability of local government, to the goal of full employment, to the maintenance of a continually rising standard of living. There is much malaise in America stemming from doubt over our capacity to solve so vast an array of problems. Too many of the problems are the legacy of decades of undisciplined growth. It is a birthright that we should not wish to pass on.

We must begin with a *national settlement policy*, which we have not had in this century. Such a policy would deal with such basic concerns as population distribution, the location and shape of urban concentrations, the identifying and preserving of recreational, farm, and natural resources areas close-by urban centers, and the interconnected responsibilities of government at all levels and of private venture to convert policy into deed. Policy would determine the role of new communities — their number, size, configuration, location, social and economic base. Programs could then ensue to give direction to that role.

Since the suggestions that follow are programmatic, they are, in a sense, made prematurely; for they reflect no consciously articulated policy — not even the writer's own. What they do reflect is an opinion that new communities will continue to be started, that private investors will have an active hand in building them, and that steps can be taken now to make government a far more lively and helpful partner and progenitor.

1. State and regional governments should evaluate and select desirable sites for new communities.
2. Land acquisition should be facilitated, either by government using its powers to assemble land which could then be resold or leased to private developers, or by giving private developers the power of eminent domain, subject to strict guidelines.
3. Local zoning powers should be broadened to permit greater flexibility in the physical and social planning of new communities, to expedite the processing of new community plans, and to

protect the fringe of new communities against the pirating of their incremental values by other developers.

4. Government should give new community builders greater financial backing: long-term, low-interest loans for land assembly; grants for planning, infrastructure, carrying charges; subsidies for the building of housing for lower-income families and for internal transportation systems; tax incentives to encourage the preservation of open space, the abatement of pollution, the hiring of minority group workers, the push for socio-economic integration; property tax abatement during the developmental period.
5. State and regional development corporations should be created, similar to New York's Urban Development Corporation, having the full reign of powers needed to plan, build, and operate a new community.
6. The Federal government should initiate new towns on federally owned lands as laboratories for new technology, racial and social integration, manpower training programs, and educational innovation.